

REMARKS

This paper is filed responsive to the Final Office Action mailed November 17, 2009. Claims 1-5 and 7-25 are pending. Claims 1, 7, 8, 15 and 24 are amended. No new matter has been added. Claim 6 is amended.

Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants traverse the rejection. Claims 1 and 24 claim that "the pivot control member being attached at or toward the distal end of the pivot control member to the at least one cutting tool." The Examiner states that it is "unclear how the pivot control member can be attached to the distal end of itself". The claim element makes clear that the pivot control member is attached at or toward the distal end of the pivot control member "***to the at least one cutting tool***". Thus, the pivot control member is not attached to itself, but to the at least one cutting tool. Applicants request withdrawal of the rejection.

Claims 1-10, 13-18, and 20-25 stand rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/34040 (Sonnabend). Applicants traverse the rejection.

Applicants have amended claims 1 and 24 to add the claim elements of claim 6. Applicants submit that Sonnabend does not disclose the elements of claims 1 and 24, as amended. Specifically, Sonnabend does not disclose a cam follower and a cam surface "wherein one of the cam surface and the cam follower is fixed relative to the handle, and the other of the cam surface and the cam follower is fixed relative to the pivot control member. The claimed invention provides at least the advantage described in paragraph 11 of the published application:

The bone resection device of the invention has the advantage that the device for controlling the position of the cutting tool is movable relative to the shaft, along the axis defined by the shaft, so that the orientation of the cutting tool can be determined according to components (for example by means of a cam surface and cam follower) spaced apart from the housing at the end of the shaft, for example at or around the proximal end of the shaft. The ability of the control device to move axially relative to the shaft allows the configuration of

the cutting tool to be controlled as desired. In this way, the connection between the control device and the cutting tool can be kept simple, allowing it to be kept small.

An example of the claimed feature is depicted at Figures 1 and 3 of the application. Figure 3 depicts a pivot control member 12 that has a cam track (or surface) 52 within which the cam follower 50 travels. This particular example of the claimed cam track and cam follower are located on the proximal end of the device near the handle when the pivot control member is assembled with shaft 2 as depicted in Figure 1B.

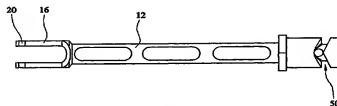


FIG. 3

As is described at paragraph 42 of Application Publication No. 2007/0276391:

The pivot control member 12 rotates relative to the handle 40 with the shaft 2. The pivot control member is made to move in a reciprocating fashion on the shaft 2. Movement of the pivot control member 12 is controlled by means of a cam track 50 on the pivot control member. The cam track is arranged generally on a plane which is perpendicular to the axis defined by the shaft 2, but is non-planar (as can be seen in FIG. 3). Two pins 52 protrude from the internal wall of the guide portion 44 of the handle 40 and extend into the cam track 50 on the pivot control member 12. One of the pins 52 can be seen in FIG. 1A. The other pin is diametrically opposite to the pin which is shown. Accordingly, as rotational motion is imparted to the shaft 2 (as described above), the pivot control member is made to rotate at the same time. Movement of the guide pins 52 within the cam track 50 causes the pivot control member then to move in a reciprocating fashion axially along the shaft 2. As described above, this causes the blade 6 within the blade housing 4 to move in and out of the blade housing, between the extended and retracted positions.

The Examiner provides an annotated Figure 10 at page 5 of the office action. Neither the cam follower 3c nor the cam surface indicated in the annotated figure are “fixed relative to the handle”. The term “fixed relative to the handle” means that it does not move relative to

handle. The cam surface of Sonnabend rotates with shaft 4 of the cutting tool relative to the handle as the cam unit 2 within which the cam surface is defined moves with shaft. Sonnabend, WO 01/34040 page 7, lines 7-8 (“A cam retaining device 6 is mounted on the shaft housing at the opposite end of the shaft, which retains a cam unit 2 having a cam follower track 2a defined therein.”) The cam follower 3c moves axially relative to the handle (see Figs 4 and 5 of Sonnabend) and/or tracks in the direction of the cam follower track 2a, which is approximately parallel to the axis of the handle. Sonnabend, page 7, lines 23-27 (“FIG. 4 the blades 3 are shown in the narrowest position with the cam followers 3d are fully received within track 2a of cam unit 2 and lying generally in-line with the walls of the track. FIG. 5 shows the blades are in the widest position, in which the cam followers 3d have moved along the walls of the track and are generally at an angle thereto. It should be remembered that at the same time the cam followers 3d are moving around the track 2a.”).

Thus, as described in Sonnabend, neither the cam surface nor the cam follower is fixed relative to the handle. Each either rotates or moves axially or moves approximately parallel with respect to the handle. As a result, Applicants submit that Sonnabend does not anticipate the inventions claimed in independent claims 1 or 24.

Claims 11-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnabend in view of US 6,383,188 (Kuslich). Claim 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnabend. Applicants traverse the rejections. Applicants submit that claims 11, 12 and 19 are patentable at least because they ultimately depend from claim 1, which is patentable over Sonnabend, and request that the Examiner withdraw the rejection.

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Please charge any fee associated with the prosecution of this application to Deposit
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Respectfully submitted,

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